

1999 WL 1486407 (Fla.Div.Admin.Hrgs.)

Division of Administrative Hearings

State of Florida

IN RE: ROBIN HOLMAN, Respondent  
IN RE: THOMAS ROUSSEAU, Respondent

Case Nos. 98-5275EC, 98-5276EC  
May 26, 1999

RECOMMENDED ORDER

\*1 Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Carolyn S. Holifield, scheduled a final hearing in this case for February 19, 1999, in Tallahassee, Florida. However, prior to hearing, the parties stipulated to the material facts and submitted the case to the undersigned on the stipulated facts and joint exhibits without an evidentiary hearing to the undersigned.

APPEARANCES

Advocate:

Eric S. Scott  
Assistant Attorney General  
Attorney General's Office  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

For Respondent:

Linda Calvert Hanson, Esquire  
3501-B North Ponce de Leon Boulevard  
Suite 342  
St. Augustine, Florida 32095

STATEMENT OF THE ISSUE

Whether the Respondents violated Section 112.313(6), Florida Statutes, by including certain letters in an official mail-out paid for by the taxpayers of the Flagler Estates Road and Water District and, if so, what penalty is appropriate.

PRELIMINARY STATEMENT

On October 27, 1998, the Florida Commission on Ethics entered an Order Finding Probable Cause to believe that the Respondents, Robin Holman and Thomas Rousseau, Supervisors of the Flagler Estates Road and Water Control District, violated Section 112.313(6), Florida Statutes, by including "campaign resumes" in the official newsletter paid for by the taxpayers of that district. Respondents challenged the allegations and requested a hearing. On December 3, 1998, the matter was forwarded to the Division of Administrative Hearings to conduct the hearing and prepare a recommended order.

Prior to the hearing, the parties stipulated to the material facts in the case and agreed to submit the case to the undersigned on the stipulated facts and documentary evidence. Thereafter, on February 19, 1999, the parties filed an Amended Joint Prehearing Order and stipulated to the introduction of Joint Exhibits numbered 1-5, all of which were received into evidence. By agreement of the parties, both the Advocate and Respondents filed proposed recommended orders on March 4, 1999.

FINDINGS OF FACT

A. Stipulated Facts

1. Respondent Holman was appointed as a member of the Board of Supervisors of the Flagler Estates Road and Water Control District (the District) on March 20, 1998. She was appointed to complete the second year of another Supervisor's three-year term.
2. Respondent Holman was elected to serve the remainder of that Supervisor's term on June 20, 1998.
3. A letter from Respondent Holman to the District's property owners was included in the District's mail-out prior to the June 20, 1998, election.
4. Respondent Holman provided Ms. Wendy Wilhelm, the District's secretary, with a copy of the subject letter. Ms. Wilhelm integrated the letter into the District's mail-out by typing it into the District's computer.
- \*2 5. Respondent Rousseau was appointed to the District Board of Supervisors on November 3, 1994. He was later elected to the position on June 18, 1995, and then re-elected on June 20, 1998.
6. Respondent Rousseau acknowledged that he provided a copy of the subject letter to Ms. Wilhelm for the express purpose of including it in the District's office mail-out.
7. The cost of the subject mailings were paid for with funds that were derived from assessments paid to the District by its property owners.
8. The aforementioned mail-out was the last District mailing issued before the June 20, 1998, District election.

B. Findings of Fact From Documentary Evidence

9. On or about May 11, 1998, the District mailed a Notice of Annual Meeting of Landowners of Flagler Estates Road and Water Control District. The notice advised landowners within the District that the annual meeting would be held on June 20, 1998, at 10:00 a.m., at the District office. Moreover, the notice stated that the purpose of the meeting was to elect supervisors, receive annual reports, and consider other business that may properly be brought before the meeting. Enclosed in the aforementioned mail-out were three letters, one from each of the three members of the District's Board of Supervisors, including Respondent Rosseau and Respondent Holman.
10. In his letter, Respondent Rousseau advised property owners of problems faced by the District during the year; provided information about his background; and stated that his "term expired in June" and that he was seeking reelection.
11. In her letter, Respondent Holman provided information about her background, advised landowners that she had only served as a District Supervisor for four months, and detailed the activities in which she had been involved on behalf of the District. Lastly, Respondent Holman wrote, "I have enjoyed my short time on the Board and hope to be elected to fulfill Gerrit Stewart's one-year term."
12. Ms. Calvert Hanson, the District's general counsel, suggested to Respondents Rosseau and Holman that the above-referenced letters be included in the District's official mail-out. Prior to the letters being mailed out to the property owners, Ms. Hanson reviewed the letters but made no modifications, except for correcting some grammatical errors. Ms. Hanson did not believe that the letters were solicitations for votes for Respondents' election or reelection to the District's Board of Supervisors.
13. Respondent Holman's and Respondent Rousseau's decision to include their respective letters in the District's official mail-out was based solely on the suggestion of the District's general counsel.

14. Prior to the letters being sent out, Respondents provided Ms. Hanson with copies thereof for her review. Having received no recommendations for substantive modifications to the letters, Respondents Holmon and Rousseau did not believe that the contents of the letters constituted an improper solicitation for support in the District's election for Supervisors.

\*3 15. Notwithstanding Respondents' subjective belief to the contrary, a portion of each of their letters constituted a solicitation for support in the June 1998 election for the District's Board of Supervisors. While Respondents' letters included information regarding the District, the letters also clearly indicated that Respondents were seeking to be elected or reelected to the District Board of Supervisors. Based on the content of the letters and the fact that they were included in the mail-out noticing the annual meeting at which supervisors would be elected, it appears reasonable that Respondents were seeking support for their election. Thus, although the letters did not expressly request that landowners "vote" for Respondents, such request was implicit in the letters.

#### CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Section 120.57(1), Florida Statutes.

17. Section 112.322, Florida Statutes, and Rule 34-5.0015, Florida Administrative Code, authorize the Commission on Ethics (Commission) to conduct investigations and to make public reports about complaints concerning violations of Part III, Chapter 112, Florida Statutes (the Code of Ethics for Public Officers and Employees).

18. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue in the proceedings. Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino vs. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). In this proceeding, it is the Commission, through its Advocate, that is asserting the affirmative: that the Respondents violated Section 112.313(6), Florida Statutes.

19. Therefore, in order to prevail, the Commission must establish by clear and convincing evidence the elements of Respondent's alleged violations. Latham v. Florida Commission on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1977), citing Department of Banking and Finance v. Osborne Stern, 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

20. Section 112.313(6), Florida Statutes, provides:

MISUSE OF PUBLIC POSITION. No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall not be construed to conflict with s. 104.31.

21. The term "corruptly" is defined by Section 112.313(9), Florida Statutes, as follows:

"Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his public duties.

\*4 22. In order to conclude that Respondent violated Section 112.313(6), Florida Statutes, the Advocate must establish the following elements:

1. The Respondent must have been a public officer or employee of an agency.
2. The Respondent must have used or attempted to use his official position or any other property or resources within his trust or perform his official duties to secure a special privilege, benefit or exemption for himself or others.
3. The Respondent must have acted corruptly, that is, with wrongful intent and for the purpose of benefiting himself or another person from some acts or omissions which are inconsistent with the proper performance of his public duties.

23. With regard to the first element, the parties have stipulated that Respondents, as Supervisors of the District, were public officers and, as such, subject to the requirements of Part III, Chapter 112, Florida Statutes. Therefore, this element has been proven.

24. Based on the allegations in the case, to establish a violation of Section 112.313(6), Florida Statutes, it must next be shown that Respondents used their official positions to secure a special privilege, benefit, or exemption for themselves. This element has been proven by the Advocate.

25. The evidence established that Respondents Holman's and Rousseau's letters were included in the District's official Notice of its Annual Meeting sent to landowners in the District. Furthermore, the evidence showed that the noticed annual meeting was for the purpose of electing of supervisors to the District's Board and that both Respondents were candidates for the two open positions on the District's Board of Supervisors. Given the content of Respondent's letters and the timing of the mail-out to landowners in the District, it appears that they were included, not simply to inform and educate taxpayers about issues concerning the District, but also to help Respondents' **election** prospects.

26. The evidence established that the letters were produced or reproduced by District personnel using District equipment and supplies. Moreover, the letters were included in an official mail-out to all property owners in the District and the postage for these mail-outs was paid for with funds that were derived from assessments paid to the District by its property owners.

27. By inserting Respondents' letters into the District mail-out at District expense, the Respondents inappropriately used resources within their trust to secure a special benefit for themselves. But for their official positions, Respondents clearly would have been unable to have the letters, which promoted their **election**, sent out at District expense and included in an official District mail-out.

28. Notwithstanding the fact that Respondents used their official positions to secure for themselves a special benefit, this in and of itself does not per se violate the Code of Ethics. To prove a violation of Section 112.313(6), Florida Statutes, it must be established that the public official acted with "wrongful intent."

\*5 29. In **Blackburn vs. Commission on Ethics, 589 So. 2d 431, 434 (Fla. 1st DCA 1991)**, the court stated that:

An essential element of the charged offense under Section 112.313(6) is the statutory requirement that appellant acted with wrongful intent, that is, that she acted with reasonable notice that her conduct was inconsistent with the proper performance of her public duties and would be in violation of the law or the code of ethics in part III of chapter 112.

30. In the instant case, it has not been established by clear and convincing evidence that Respondents acted corruptly. Rather, the evidence established that Respondents' letters were included in the District's official mail-out as a result of the District's general counsel's recommendation. Moreover, the letters were not mailed out until after Respondents provided them to the District's general counsel for review and after she, in fact, reviewed them.

31. Based on the facts, there is insufficient evidence to find that the Respondents acted with the requisite corrupt or wrongful intent necessary to find a violation of Section 112.313(6), Florida Statutes.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is:

RECOMMENDED that a Final Order and Public Report be entered finding that Respondent Robin Holman and Respondent Thomas Rousseau did not violate Section 112.313(6), Florida Statutes.

DONE AND ENTERED this 26th day of May, 1999, in Tallahassee, Leon County, Florida.

CAROLYN S. HOLIFIELD  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

Filed with the Clerk of the Division of Administrative Hearings this 26th day of May, 1999.

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.

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589 So.2d 431  
District Court of Appeal of Florida,  
First District.

Louise BLACKBURN, Appellant,  
v.  
STATE of Florida, COMMISSION ON ETHICS,  
Appellee.

No. 89-2776.

|  
Nov. 15, 1991.

Commission on Ethics fined county commissioner for violating code of ethics by having county employee compile information and write article in support of county ordinance which commissioner used in her campaign for reelection as county commissioner. Commissioner appealed. The District Court of Appeal, Zehmer, J., held that record did not support finding that commissioner corruptly used her office to obtain benefit for herself justifying fine for ethics violation.

Reversed and remanded.

West Headnotes (2)

[11]

**Counties**

⇒ Liabilities of members

**Public Employment**

⇒ State, local, and other non-federal personnel in general

County commissioner did not act with requisite wrongful intent in having employee of county compile information and write short article in support of county ordinance which she used in her campaign for reelection as county commissioner so as to justify fine for ethics violation, where commissioner's undisputed testimony was that employee's work product was intended to be used and was in fact used for dual purposes: to inform public as county commissioner on issue of ordinance, and to assist commissioner in her reelection campaign; pertinent statute provided no basis for converting valid purpose into illegal or unethical act simply because information was also to be used in political campaign. West's F.S.A. §§ 112.011 et seq., 112.311-112.326, 112.311(1-5), 112.312(7), 112.313(6).

1 Cases that cite this headnote

[21]

**Public Employment**

⇒ Ethics and conflicts of interest in general

"Corruptly," within meaning of code of ethics for public officers and employees, not only required that conduct complained of be done with wrongful intent, but also that act or omission be inconsistent with proper performance of public duties. West's F.S.A. §§ 112.311(4), 112.312(7).

4 Cases that cite this headnote

**Attorneys and Law Firms**

\*432 Harold S. Richmond, Quincy, for appellant.

Floy Mikell Busby, Staff Atty., Florida Com'n on Ethics, Robert A. Butterworth, Atty. Gen., and Craig B. Willis, Asst. Atty. Gen., Tallahassee, for appellee.

REVISED OPINION

ZEHMER, Judge.

This is an appeal by Louise Blackburn from a final order entered by the Florida Commission on Ethics. The Commission found her guilty of violating section 112.313(6), Florida Statutes (1989), by corruptly using her official position as a county commissioner to secure a special benefit for herself, i.e., having an employee of Gadsden County compile information and write a short article in support of the county ordinance imposing mandatory garbage pickup and fees, which she used in her campaign for reelection as county commissioner. We hold that the evidence to prove appellant's corrupt intent is legally insufficient, and therefore reverse and remand with directions to dismiss the charge.

The facts found by the hearing officer in the recommended order were as follows. Appellant was a member of the Gadsden County Commission in 1988 when the Commission determined that the current system



of garbage collection and disposal was inadequate because citizens were required to take their garbage to centrally located disposal sites, which had become eyesores, and many citizens were merely dumping garbage at unauthorized locations in the county. In response to this perceived need, the Commission adopted a county ordinance requiring each county resident to subscribe to and pay for mandatory garbage pickup. Appellant strongly supported and voted for this ordinance and was intensely interested in seeing that it be accepted by the citizens of Gadsden County. The ordinance met with considerable opposition, however, and it became the dominant political issue in appellant's campaign for reelection as county commissioner during the summer of 1988.

During that summer, appellant asked Mr. George LaCroix, the Director of Planning and Zoning for the County, to prepare a written article on the garbage ordinance. The request was made during his working hours, within the scope of his duties with the County, and he understood this to be an official request from a county commissioner. The article drafted by Mr. LaCroix had \*433 blank spaces for specific information concerning certain county statistics, and appellant obtained this information at a later time from Mr. Bill Lee, the County Engineer. Ms. Carolyn Wise, another county employee, typed the article. As finally written, the article was a forceful statement in support of the garbage ordinance and its objectives. The information in the article was used by appellant in political speeches in support of the ordinance and in her candidacy for reelection, and she had it published as a paid political advertisement in a local newspaper. Mr. LaCroix, Mr. Lee, and Ms. Wise all testified that appellant received no special benefit or treatment in respect to the article, but this testimony was rejected by the hearing officer for lack of credibility.

A complaint against appellant, charging her with several violations of the ethics statutes in Part III of Chapter 112, Florida Statutes, was filed with the Ethics Commission by a political opponent. Only one charge survived the hearing, and it is the one involved on this appeal. The surviving charge essentially alleged that appellant's use of county employees to compile information and write the article supporting the garbage ordinance, which she used in her political speeches and in a political ad published in the local newspaper, constituted the misuse of appellant's office as a county commissioner in violation of section 112.313(6), Florida Statutes (1989).

In defense of the charge, appellant emphatically denied any corrupt or intentional wrongdoing. According to the findings in the hearing officer's recommended order,

*Appellant's response*

appellant contended at the hearing that "the document she asked LaCroix to prepare was merely to provide her with information which she could use, as a County Commissioner, to respond to questions about the garbage issue. She also appeared to contend that the article in the newspaper was an attempt to keep the public informed about a particular issue, rather than a campaign advertisement"; and that her request was similar to a request by a public official or member of the public who seeks information from a public agency about a matter of public concern, so that "she did not receive anything that any member of the public could not receive upon a similar request."

*Ethics Comm ruling*

The hearing officer rejected these contentions, noting that, as published in the newspaper ad, the article "was persuasive rather than simply informational" and was clearly "an attempt to persuade the reader that the decision on the garbage issue was the correct decision." The hearing officer found that no member of the public could have had Mr. LaCroix prepare a similar article and rejected the notion that preparation of the article was part of his duties "in light of the fact that the article was used for [appellant's] private political campaign." Accordingly, the hearing officer concluded that Mr. LaCroix's preparation of the article for use in appellant's campaign "constituted a special benefit to her," that is, "This was a special benefit and involved using a County employee's time for a private political purpose." The hearing officer's recommended order drew a material distinction between the article and Mr. LaCroix having furnished information "concerning the amount of fees which had been collected under the ordinance, or the tons of garbage, or other such information to which Mr. LaCroix had access," and concluded that "the provision of such information would not have been a special benefit, and [appellant] would have been free to use it in her campaign, just as her opponent would have been free to use it in campaigning against her." The hearing officer further stated in his recommended conclusions of law:

8. It is noted that [appellant] might have requested a public employee to prepare a speech, or "talking paper" which she intended to use for speeches given within her official capacity as a County Commissioner. This was not the case with [appellant's] request of Mr. LaCroix, however, as the evidence establishes that [appellant] requested that he prepare the article specifically for her use in her private political campaign.

9. In that [appellant] asked a County employee to prepare an article which she intended to use for political speeches and \*434 as a campaign advertisement, [appellant] acted in [a] manner which was inconsistent with her public duties. Her intent to

*Issue*



use the article in her campaign was wrongful within the meaning of section 112.312(7), Florida Statutes [defining the term "corruptly."].

Commission  
during  
campaign

The Commission accepted the findings of fact and conclusions of law in the hearing officer's recommended order, found appellant guilty of the alleged violation, and recommended that a \$250 civil penalty be imposed against appellant. This appeal ensued.

<sup>11</sup> Section 112.313(6), Florida Statutes (1989), provides in pertinent part:

(6) MISUSE OF PUBLIC POSITION.—No public officer ... shall corruptly use or attempt to use his official position ... or perform his official duties, to secure a special ... benefit ... for himself...

The term "corruptly" is statutorily defined in section 112.312(7):

"Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his public duties.

The hearing officer and the Ethics Commission have construed these statutory provisions to encompass obtaining the assistance of a county employee in compiling information and writing a speech or ad that eventually was used in a reelection campaign. They have reached this conclusion without citing to any specific provision by rule or statute other than section 112.313(6), or referring to any published opinion of any Florida court or the Ethics Commission itself, that would give fair and reasonable warning that appellant's obtaining the assistance of the county employee under the circumstances shown in this case would be unlawful or unethical. An essential element of the charged offense under section 112.313(6) is the statutory requirement that appellant acted with wrongful intent, that is, that she acted with reasonable notice that her conduct was inconsistent with the proper performance of her public duties and would be a violation of the law or the code of ethics in part III of chapter 112. We do not believe that section 112.313(6), standing alone, provided a legally sufficient basis for putting appellant on notice that she was committing an unethical practice under these

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circumstances. Indeed, the conduct in this case as found by the hearing officer does not fall within the stated legislative intent of the code of ethics in chapter 112.<sup>1</sup>

Part III of chapter 112, entitled "Code of Ethics for Public Officers and Employees," is comprised of sections 112.311 through 112.326. The legislative intent and declaration of policy set forth in section 112.311 states:

(1) It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.

(2) It is also essential that government attract those citizens best qualified to serve. Thus, the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve. Public officials should not be denied the opportunity, available to all other citizens, to acquire and retain private economic interests except when conflicts with the responsibility of such officials to the public cannot be avoided.

(3) It is likewise essential that the people be free to seek redress of their grievances and express their opinions to all government officials on current issues \*435 and past or pending legislative and executive actions at every level of government. In order to preserve and maintain the integrity of the governmental process, it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions, either by direct communication with such officials or by solicitation of others to engage in such efforts, be regularly disclosed to the people.

(4) It is the intent of this act to implement these objectives of protecting the integrity of government and of facilitating the recruitment and retention of qualified personnel by prescribing restrictions against conflicts of interest without creating unnecessary barriers to public service.

(5) It is hereby declared to be the policy of the state that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or



professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees, and of officers and employees of other political subdivisions of the state, in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part.

(6) It is declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public. They are bound to uphold the Constitution of the United States and the State Constitution and to perform efficiently and faithfully their duties under the laws of the federal, state, and local governments. Such officers and employees are bound to observe, in their official acts, the highest standards of ethics consistent with this code and the advisory opinions rendered with respect hereto regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.

It is quite apparent that the primary concern of these statements of legislative intent and purpose lies in avoiding conflicts of interest by public officials in matters under their charge, and eliminating private gain, directly or indirectly, by financial compensation or otherwise, in carrying out their official duties on behalf of the government they are sworn to serve. Section 112.311(5) specifically refers to the code of ethics enacted in this part to implement the policy and intent recited in the preceding subparagraphs (1) through (4), and the standards of conduct set forth in section 112.313 must be construed in the context of these provisions.

We find nothing in the language of these sections that suggests the incidental benefit appellant may have received or enjoyed in respect to her campaign for reelection by having a county employee draft the subject article was intended to be covered by this code of ethics. Both the hearing officer and the Ethics Commission agreed that it would have been appropriate for appellant to have obtained the information and written article in this case to use in her official capacity as County Commissioner *apart from being used in the reelection campaign*. Appellant insisted that the employee's work product was intended to be used and was in fact used for

dual purposes: to inform the public as a county commissioner on an issue of vital importance to the county citizens, and to assist appellant in her reelection campaign. The first purpose is obviously a valid one, and the pertinent statutory language provides no basis for converting that valid purpose into an illegal \*436 or unethical act simply because the information was also to be used in a political campaign. There is no evidence in the record, apart from appellant's having freely admitted use of the article in her campaign, that disputes or contradicts her testimony regarding her intent to use the material for both purposes. The record does not contain competent substantial evidence to support a finding of fact that appellant's only purpose in obtaining the article was to corruptly use her office to obtain a prohibited benefit for use in her campaign.

[2] We also reach this conclusion because there is nothing inconsistent with appellant's duties as county commissioner in her soliciting public support for the garbage ordinance she felt so strongly was in the public interest, even though that occurred during the course of a political campaign. The statutory definition of "corruptly" in section 112.312(7) not only requires that the conduct complained of be done with a wrongful intent, it also requires that the "act or omission" be "inconsistent with the proper performance of [her] public duties." The statement of intent and policy in section 112.311(4) makes it clear that the ethics code is to be construed and applied so as to facilitate "the recruitment and retention of qualified personnel by prescribing restrictions against conflicts of interest without creating unnecessary barriers to public service." A county commissioner's use of information and written documents, otherwise ordinarily available from county employees for use as a commissioner, in a reelection campaign must be weighed against the obvious duty of the commissioner to communicate with the electorate concerning the performance of the commissioner's public duties, and to place such a rigid restriction on the commissioner as the hearing officer and Commission concluded to do in this case is contrary to the stated legislative intent and policy. It would be difficult, indeed, for this commissioner or anyone else to know when their use of county employees in the performance of their official duties would cross the line of prohibited conduct. If the code of ethics in section 112.313 is to cover the acts charged and proved against appellant in this case, the legislature must evidence that intent in more specific statutory enactments.

Partially consistent w/ Δ duties as County Commissioner

Having concluded that the record fails to contain competent substantial evidence to prove appellant acted in these matters with the requisite wrongful intent to violate any law or standard of ethics and that the conduct charged

and proven against appellant under the circumstances of this case' is not within the proscriptions of section 112.313(6), we reverse the Commission's final order and remand with directions to dismiss the charge against appellant.

BOOTH and SMITH, JJ., concur.

All Citations

589 So.2d 431, 16 Fla. L. Weekly D2894

REVERSED AND REMANDED.

Footnotes

- 1 Our holding in this case is limited to the particular circumstances shown and should not be read as a carte blanche authorization that incumbent candidates for political office can freely use public employees on public time to aid in their reelection campaigns.
- 2 See note 1 on page 434.





Select Year: 2016 ▾ 

## The 2016 Florida Statutes

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[Title IX](#)[Chapter 104](#)[View Entire Chapter](#)

## ELECTORS AND ELECTIONS

## ELECTION CODE: VIOLATIONS; PENALTIES

**104.31 Political activities of state, county, and municipal officers and employees.—**

(1) No officer or employee of the state, or of any county or municipality thereof, except as hereinafter exempted from provisions hereof, shall:

(a) Use his or her official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person's vote or affecting the result thereof.

(b) Directly or indirectly coerce or attempt to coerce, command, or advise any other officer or employee to pay, lend, or contribute any part of his or her salary, or any money, or anything else of value to any party, committee, organization, agency, or person for political purposes. Nothing in this paragraph or in any county or municipal charter or ordinance shall prohibit an employee from suggesting to another employee in a noncoercive manner that he or she may voluntarily contribute to a fund which is administered by a party, committee, organization, agency, person, labor union or other employee organization for political purposes.

(c) Directly or indirectly coerce or attempt to coerce, command, and advise any such officer or employee as to where he or she might purchase commodities or to interfere in any other way with the personal right of said officer or employee.

The provisions of this section shall not be construed so as to prevent any person from becoming a candidate for and actively campaigning for any elective office in this state. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. The provisions of paragraph (a) shall not be construed so as to limit the political activity in a general, special, primary, bond, referendum, or other election of any kind or nature, of elected officials or candidates for public office in the state or of any county or municipality thereof; and the provisions of paragraph (a) shall not be construed so as to limit the political activity in general or special elections of the officials appointed as the heads or directors of state administrative agencies, boards, commissions, or committees or of the members of state boards, commissions, or committees, whether they be salaried, nonsalaried, or reimbursed for expense. In the event of a dual capacity of any member of a state board, commission, or committee, any restrictive provisions applicable to either capacity shall apply. The provisions of paragraph (a) shall not be construed so as to limit the political activity in a general, special, primary, bond, referendum, or other election of any kind or nature of the Governor, the elected members of the Governor's Cabinet, or the members of the Legislature. The provisions of paragraphs (b) and (c) shall apply to all officers and employees of the state or of any county or municipality thereof, whether elected, appointed, or otherwise employed, or whether the activity shall be in connection with a primary, general, special, bond, referendum, or other election of any kind or nature.

(2) An employee of the state or any political subdivision may not participate in any political campaign for an elective office while on duty.

(3) Any person violating the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(4) Nothing contained in this section or in any county or municipal charter shall be deemed to prohibit any public employee from expressing his or her opinions on any candidate or issue or from participating in any political





campaign during the employee's off-duty hours, so long as such activities are not in conflict with the provisions of subsection (1) or s. 110.233.

History.—s. 8, ch. 26870, 1951; s. 7, ch. 29615, 1955; s. 5, ch. 29936, 1955; s. 1, ch. 59-208; s. 18, ch. 65-379; s. 53, ch. 71-136; ss. 1, 2, ch. 74-13; s. 1, ch. 75-261; s. 30, ch. 79-190; s. 1, ch. 80-207; s. 628, ch. 95-147; s. 1, ch. 2006-275.

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## The 2016 Florida Statutes

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### Title X

#### PUBLIC OFFICERS, EMPLOYEES, AND RECORDS

### Chapter 110

#### STATE EMPLOYMENT

### [View Entire Chapter](#)

#### **110.233 Political activities and unlawful acts prohibited.—**

(1) No person shall be appointed to, demoted, or dismissed from any position in the career service, or in any way favored or discriminated against with respect to employment in the career service, because of race, color, national origin, sex, handicap, religious creed, or political opinion or affiliation.

(2) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the career service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person or for any consideration; however, letters of inquiry, recommendations, and references by public employees or public officials shall not be considered political pressure unless any such letter contains a threat, intimidation, or irrelevant, derogatory, or false information. For the purposes of this section, the term "political pressure," in addition to any appropriate meaning which may be ascribed thereto by lawful authority, includes the use of official authority or influence in any manner prohibited by this chapter.

(3) No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the career service. The provisions of this subsection do not apply to a private employment agency licensed pursuant to the provisions of <sup>1</sup>chapter 449 when the services of such private employment agency are requested by a state agency, board, department, or commission and neither the state nor any political subdivision pays the private employment agency for such services.

(4) As an individual, each employee retains all rights and obligations of citizenship provided in the Constitution and laws of the state and the Constitution and laws of the United States. However, no employee in the career service shall:

(a) Hold, or be a candidate for, public office while in the employment of the state or take any active part in a political campaign while on duty or within any period of time during which the employee is expected to perform services for which he or she receives compensation from the state. However, when authorized by his or her agency head and approved by the department as involving no interest which conflicts or activity which interferes with his or her state employment, an employee in the career service may be a candidate for or hold local public office. The department shall prepare and make available to all affected personnel who make such request a definite set of rules and procedures consistent with the provisions herein.

(b) Use the authority of his or her position to secure support for, or oppose, any candidate, party, or issue in a partisan election or affect the results thereof.

(5) No state employee or official shall use any promise of reward or threat of loss to encourage or coerce any employee to support or contribute to any political issue, candidate, or party.

(6) The department shall adopt by rule procedures for Career Service System employees that require disclosure to the agency head of any application for or offer of employment, gift, contractual relationship, or financial interest with any individual, partnership, association, corporation, utility, or other organization, whether public or private, doing business with or subject to regulation by the agency.











trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

(7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

1. When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.

2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

(b) This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

(8) DISCLOSURE OR USE OF CERTAIN INFORMATION.—A current or former public officer, employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

(9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES.—

(a)1. It is the intent of the Legislature to implement by statute the provisions of s. 8(e), Art. II of the State Constitution relating to legislators, statewide elected officers, appointed state officers, and designated public employees.

2. As used in this paragraph:

a. "Employee" means:

(I) Any person employed in the executive or legislative branch of government holding a position in the Senior Management Service as defined in s. 110.402 or any person holding a position in the Selected Exempt Service as defined in s. 110.602 or any person having authority over policy or procurement employed by the Department of the Lottery.

(II) The Auditor General, the director of the Office of Program Policy Analysis and Government Accountability, the Sergeant at Arms and Secretary of the Senate, and the Sergeant at Arms and Clerk of the House of Representatives.

(III) The executive director and deputy executive director of the Commission on Ethics.

(IV) An executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, analyst, or





attorney of the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, Senate Minority Party Office, House Majority Party Office, or House Minority Party Office; or any person, hired on a contractual basis, having the power normally conferred upon such persons, by whatever title.

(V) The Chancellor and Vice Chancellors of the State University System; the general counsel to the Board of Governors of the State University System; and the president, provost, vice presidents, and deans of each state university.

(VI) Any person, including an other-personal-services employee, having the power normally conferred upon the positions referenced in this sub-subparagraph.

b. "Appointed state officer" means any member of an appointive board, commission, committee, council, or authority of the executive or legislative branch of state government whose powers, jurisdiction, and authority are not solely advisory and include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relative to its internal operations.

c. "State agency" means an entity of the legislative, executive, or judicial branch of state government over which the Legislature exercises plenary budgetary and statutory control.

3.a. No member of the Legislature, appointed state officer, or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of 2 years following vacation of office. No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

b. For a period of 2 years following vacation of office, a former member of the Legislature may not act as a lobbyist for compensation before an executive branch agency, agency official, or employee. The terms used in this sub-subparagraph have the same meanings as provided in s. [112.3215](#).

4. An agency employee, including an agency employee who was employed on July 1, 2001, in a Career Service System position that was transferred to the Selected Exempt Service System under chapter 2001-43, Laws of Florida, may not personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

5. Any person violating this paragraph shall be subject to the penalties provided in s. [112.317](#) and a civil penalty of an amount equal to the compensation which the person receives for the prohibited conduct.

6. This paragraph is not applicable to:

a. A person employed by the Legislature or other agency prior to July 1, 1989;

b. A person who was employed by the Legislature or other agency on July 1, 1989, whether or not the person was a defined employee on July 1, 1989;

c. A person who was a defined employee of the State University System or the Public Service Commission who held such employment on December 31, 1994;

d. A person who has reached normal retirement age as defined in s. [121.021\(29\)](#), and who has retired under the provisions of chapter 121 by July 1, 1991; or

e. Any appointed state officer whose term of office began before January 1, 1995, unless reappointed to that office on or after January 1, 1995.

(b) In addition to the provisions of this part which are applicable to legislators and legislative employees by virtue of their being public officers or employees, the conduct of members of the Legislature and legislative employees shall be governed by the ethical standards provided in the respective rules of the Senate or House of Representatives which are not in conflict herewith.

(10) EMPLOYEES HOLDING OFFICE.—

(a) No employee of a state agency or of a county, municipality, special taxing district, or other political subdivision of the state shall hold office as a member of the governing board, council, commission, or authority, by





whatever name known, which is his or her employer while, at the same time, continuing as an employee of such employer.

(b) The provisions of this subsection shall not apply to any person holding office in violation of such provisions on the effective date of this act. However, such a person shall surrender his or her conflicting employment prior to seeking reelection or accepting reappointment to office.

(11) PROFESSIONAL AND OCCUPATIONAL LICENSING BOARD MEMBERS.—No officer, director, or administrator of a Florida state, county, or regional professional or occupational organization or association, while holding such position, shall be eligible to serve as a member of a state examining or licensing board for the profession or occupation.

(12) EXEMPTION.—The requirements of subsections (3) and (7) as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person. In addition, no person shall be held in violation of subsection (3) or subsection (7) if:

(a) Within a city or county the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the city or county.

(b) The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and:

1. The official or the official's spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder;

2. The official or the official's spouse or child has in no way used or attempted to use the official's influence to persuade the agency or any personnel thereof to enter such a contract other than by the mere submission of the bid; and

3. The official, prior to or at the time of the submission of the bid, has filed a statement with the Commission on Ethics, if the official is a state officer or employee, or with the supervisor of elections of the county in which the agency has its principal office, if the official is an officer or employee of a political subdivision, disclosing the official's interest, or the interest of the official's spouse or child, and the nature of the intended business.

(c) The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier.

(d) An emergency purchase or contract which would otherwise violate a provision of subsection (3) or subsection (7) must be made in order to protect the health, safety, or welfare of the citizens of the state or any political subdivision thereof.

(e) The business entity involved is the only source of supply within the political subdivision of the officer or employee and there is full disclosure by the officer or employee of his or her interest in the business entity to the governing body of the political subdivision prior to the purchase, rental, sale, leasing, or other business being transacted.

(f) The total amount of the transactions in the aggregate between the business entity and the agency does not exceed \$500 per calendar year.

(g) The fact that a county or municipal officer or member of a public board or body, including a district school officer or an officer of any district within a county, is a stockholder, officer, or director of a bank will not bar such bank from qualifying as a depository of funds coming under the jurisdiction of any such public board or body, provided it appears in the records of the agency that the governing body of the agency has determined that such officer or member of a public board or body has not favored such bank over other qualified banks.

(h) The transaction is made pursuant to s. 1004.22 or s. 1004.23 and is specifically approved by the president and the chair of the university board of trustees. The chair of the university board of trustees shall submit to the Governor and the Legislature by March 1 of each year a report of the transactions approved pursuant to this paragraph during the preceding year.



(i) The public officer or employee purchases in a private capacity goods or services, at a price and upon terms available to similarly situated members of the general public, from a business entity which is doing business with his or her agency.

(j) The public officer or employee in a private capacity purchases goods or services from a business entity which is subject to the regulation of his or her agency and:

1. The price and terms of the transaction are available to similarly situated members of the general public; and
2. The officer or employee makes full disclosure of the relationship to the agency head or governing body prior to the transaction.

(13) COUNTY AND MUNICIPAL ORDINANCES AND SPECIAL DISTRICT AND SCHOOL DISTRICT RESOLUTIONS REGULATING FORMER OFFICERS OR EMPLOYEES.—The governing body of any county or municipality may adopt an ordinance and the governing body of any special district or school district may adopt a resolution providing that an appointed county, municipal, special district, or school district officer or a county, municipal, special district, or school district employee may not personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or employee for a period of 2 years following vacation of office or termination of employment, except for the purposes of collective bargaining. Nothing in this section may be construed to prohibit such ordinance or resolution.

(14) LOBBYING BY FORMER LOCAL OFFICERS; PROHIBITION.—A person who has been elected to any county, municipal, special district, or school district office may not personally represent another person or entity for compensation before the government body or agency of which the person was an officer for a period of 2 years after vacating that office. For purposes of this subsection:

- (a) The “government body or agency” of a member of a board of county commissioners consists of the commission, the chief administrative officer or employee of the county, and their immediate support staff.
- (b) The “government body or agency” of any other county elected officer is the office or department headed by that officer, including all subordinate employees.
- (c) The “government body or agency” of an elected municipal officer consists of the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.
- (d) The “government body or agency” of an elected special district officer is the special district.
- (e) The “government body or agency” of an elected school district officer is the school district.

(15) ADDITIONAL EXEMPTION.—No elected public officer shall be held in violation of subsection (7) if the officer maintains an employment relationship with an entity which is currently a tax-exempt organization under s. 501(c) of the Internal Revenue Code and which contracts with or otherwise enters into a business relationship with the officer’s agency and:

- (a) The officer’s employment is not directly or indirectly compensated as a result of such contract or business relationship;
- (b) The officer has in no way participated in the agency’s decision to contract or to enter into the business relationship with his or her employer, whether by participating in discussion at the meeting, by communicating with officers or employees of the agency, or otherwise; and
- (c) The officer abstains from voting on any matter which may come before the agency involving the officer’s employer, publicly states to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining, and files a written memorandum as provided in s. 112.3143.

(16) LOCAL GOVERNMENT ATTORNEYS.—

(a) For the purposes of this section, “local government attorney” means any individual who routinely serves as the attorney for a unit of local government. The term shall not include any person who renders legal services to a unit of local government pursuant to contract limited to a specific issue or subject, to specific litigation, or to a specific administrative proceeding. For the purposes of this section, “unit of local government” includes, but is not limited to, municipalities, counties, and special districts.

(b) It shall not constitute a violation of subsection (3) or subsection (7) for a unit of local government to contract with a law firm, operating as either a partnership or a professional association, or in any combination thereof, or



with a local government attorney who is a member of or is otherwise associated with the law firm, to provide any or all legal services to the unit of local government, so long as the local government attorney is not a full-time employee or member of the governing body of the unit of local government. However, the standards of conduct as provided in subsections (2), (4), (5), (6), and (8) shall apply to any person who serves as a local government attorney.

(c) No local government attorney or law firm in which the local government attorney is a member, partner, or employee shall represent a private individual or entity before the unit of local government to which the local government attorney provides legal services. A local government attorney whose contract with the unit of local government does not include provisions that authorize or mandate the use of the law firm of the local government attorney to complete legal services for the unit of local government shall not recommend or otherwise refer legal work to that attorney's law firm to be completed for the unit of local government.

(17) BOARD OF GOVERNORS AND BOARDS OF TRUSTEES.—No citizen member of the Board of Governors of the State University System, nor any citizen member of a board of trustees of a local constituent university, shall have or hold any employment or contractual relationship as a legislative lobbyist requiring annual registration and reporting pursuant to s. [11.045](#).

**History.**—s. 3, ch. 67-469; s. 2, ch. 69-335; ss. 10, 35, ch. 69-106; s. 3, ch. 74-177; ss. 4, 11, ch. 75-208; s. 1, ch. 77-174; s. 1, ch. 77-349; s. 4, ch. 82-98; s. 2, ch. 83-26; s. 6, ch. 83-282; s. 14, ch. 85-80; s. 12, ch. 86-145; s. 1, ch. 88-358; s. 1, ch. 88-408; s. 3, ch. 90-502; s. 3, ch. 91-85; s. 4, ch. 91-292; s. 1, ch. 92-35; s. 1, ch. 94-277; s. 1406, ch. 95-147; s. 3, ch. 96-311; s. 34, ch. 96-318; s. 41, ch. 99-2; s. 29, ch. 2001-266; s. 20, ch. 2002-1; s. 894, ch. 2002-387; s. 2, ch. 2005-285; s. 2, ch. 2006-275; s. 10, ch. 2007-217; s. 16, ch. 2011-34; s. 3, ch. 2013-36.







**Dr. Smith Joseph, Mayor of North Miami**

# **Farmshare and Share Your Heart Community Food Distribution**

**Friday, May 5, 2017 | 9 a.m. - 12 p.m.**

**GOLDEN SILVER  
SENIOR PROGRAM  
NOW AVAILABLE  
AT GRIFFING  
COMMUNITY CENTER**  
Every Friday 8 a.m. - 2 p.m.  
Starting Friday May 5th !!

**GRIFFING COMMUNITY CENTER**  
12220 Griffing Boulevard  
North Miami, FL 33161

Farm Share and Share your Heart  
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Limited supplies. First come, first serve basis.

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## Community Food Distribution

**Dr. Smith Joseph, Mayor of North Miami**  
In collaboration with  
**Farmshare and Share Your Heart**

**Friday, May 27, 2016 | 9:00 a.m.**

**GRIFFING PARK**  
NE 123 Street & West Dixie Highway  
North Miami, FL 33161

Farm Share and Share your Heart  
will be providing free food for families.  
Donation will be one per household.

Limited supplies. First come, first serve basis.



**For more information contact the  
North Miami Office of the Mayor and Council at 305-895-9818.  
NorthMiamiFL.gov**



